In the High Court of Judicature at Madras

Reserved on : **12.08.2025**	Delivered on: **14.08.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.3754 of 2023
and WMP Nos.3831 & 3834 of 2023

Arvind Kumar Bishonoi ...Petitioner

.Vs.

Bank of Baroda
Stressed Assets Management Branch
45, Moore Street
JBAS Building , 4th Floor
Chennai 600 001. ...Respondent

(also having corporate office
at C-26, G-Block, Bandra Kuria Complex
Bandra East, Mumbai-400 051)

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the order dated 13.01.2023 passed by the Review Committee of the respondent Bank and quash the same.

For Petitioner : Mr.P.V.Balasubramaniam
Senior Counsel for
Mr.AR.Karthik Lakshmanan

For Respondent : Mr.S.Sathyanarayanan

ORDER

This writ petition has been filed challenging the decision taken by the Wilful Defaulters Review Committee dated 13.01.2023 declaring the petitioner also as one of the wilful defaulter.

2.The case of the petitioner is that he was inducted as a director (marketing) of M/s.Tecpro Infra Projects Limited on 30.09.2010. This Company was sanctioned credit facilities by the respondent Bank. It is stated that the petitioner was not involved in the day-to-day affairs of the Company and he was neither a promoter nor a whole time director. Apart from that during his tenure as a director, the Company was repaying the loans without any default. The petitioner submitted his resignation with effect from 02.09.2013. Much later on 21.10.2014, the bank account of the Company was declared as Non-Performing Assets [NPA]. A show cause notice dated 20.10.2022, was served on the petitioner to show cause as to why he amongst others should not be declared as wilful defaulters. The petitioner submitted his reply.

3.The grievance of the petitioner is that the Review Committee did not properly consider the reply given by the petitioner and included the name of the petitioner also as a wilful defaulter which according to the petitioner is in violation of the Master Circular issued by the RBI dated 01.07.2015. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The respondent Bank has filed a counter and has taken a stand that the petitioner was involved in the day-to-day affairs of the Company and he was the Key Management Personnel of the Company who signed in audit balance sheet, company resolutions, etc. He was also simultaneously holding the position of director in M/s Hythro Power Corporation Limited from 10.11.2010 to 07.09.2013. Immediately after the Company resigned on 02.09.2013, the loan account of the petitioner was declared as NPA on 31.01.2014. The petitioner's father was also a director of the Company. Pursuant to the proceedings initiated before the NCLT, New Delhi, the resolution professional conducted forensic audit report for the period commencing from 01.1.2013 to 19.08.2020 and found various fraudulent transactions and adjusted entries. These transactions had taken place even before the resignation of the petitioner from directorship.

5.The outstanding balance from the Company was Rs.47.72 crores and hence the proceedings were initiated as per the Master Circular dated 01.07.2015 by the Identification Committee by issuing show cause notice dated 22.07.2022. The show cause notice was not able to be served on the petitioner and hence paper publication was effected. Even thereafter, the petitioner did not attend the enquiry. Therefore, the Committee after due consideration of the material on record passed the order dated 11.10.2022. This order was communicated to the petitioner through notice dated 20.10.2022. This time the petitioner received the notice. Subsequent to the notice, the petitioner gave his reply dated 26.10.2022. After the petitioner was provided an opportunity, the Review Committee took a decision to declare him as wilful defaulter apart from others. According to the respondent Bank, an opportunity was given and the Master Circular was complied with and therefore there is no ground to interfere with the decision taken by the Review Committee. Accordingly, the respondent Bank has sought for the dismissal of this writ petition.

6.Heard both sides.

7.The only issue that is involved in the present writ petition is as to whether the decision taken by the Review Committee is in line with the Master Circular of the RBI dated 01.07.2015 and it is in line with the judgment of the Apex Court in ***State Bank of India vs Jah Developers Private Limited and others*** reported in ***2019 6 SCC 787***. For proper appreciation, para 24 of the judgment is extracted hereunder:

> ***24.****Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in Para 3 of the Revised Circular dated 1-7-2015, as it is clear that the events of wilful default as mentioned in Para 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show-cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present*

case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that Para 3 of the Master Circular dated 1-7-2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following Para 3(b) of the Revised Circular dated 1-7-2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 1-7-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 1-7-

2015. The impugned judgment [SBI v. Jah Developers (P) Ltd., LPA No. 113 of 2015 sub nom Punjab National Bank v. Kingfisher Airlines Ltd., 2015 SCC OnLine Del 14128 : (2016) 154 DRJ 164] , [Kingfisher Airlines Ltd. v. Union of India, 2015 SCC OnLine Bom 6075 : (2016) 2 Mah LJ 838] is, therefore, set aside, and the appeals are allowed in terms of our judgment. We thank the learned Amicus Curiae, Shri Parag Tripathi, for his valuable assistance to this Court.

8.The main ground that was raised by the learned Senior Counsel for the petitioner is that the Review Committee did not comply with the procedure prescribed under the Master Circular and no opportunity of personal hearing was given to the petitioner. That apart, the objections given by the petitioner was not considered and the order has been passed only on the basis of the forensic audit report and this report was not made available to the petitioner.

9.A careful perusal of the materials available on record shows that the petitioner was holding equity shares in M/s Tecpro Infra Projects Limited which was evident from the annual reports of the Company signed by the petitioner on 26.11.2012 where the petitioner has also certified about the credentials of the Company. He has also signed the audited financial statement for the year ending 31.3.2011 in his capacity as the director along with the whole time director. The petitioner was also involved in the allotment of shares of M/s. Tecpro Engineers Private Limited which was renamed as M/s.Tecpro Engineers Limited where the petitioner was holding the position of director. The petitioner was also the son of one of the promoter director Mr. Ajay Kumar Bishnoi. The credit facilities that were extended to the Company was diverted to the group companies to the tune of Rs.4.67crores to M/s.Tecpro Infrastructure Private Limited, M/s.Hythro Power Corporation Limited to the tune of Rs. 8 crores, M/s.Shriram Cement Limited to the tune of Rs.2.01 crores and GET Power Limited to the tune of Rs.19.92 crores. It was also found that the Company had sold various assets for a lesser value and incurred loss. Apart from that, entries were made in the books of accounts by showing considerable loss to the financial creditors. All these were borne out by the forensic audit report that was filed before the NCLT.

10.It is quite curious that the notice that was sent to the petitioner by the Identification Committee was not able to be served on the petitioner. Whereas the notice dated 20.10.2022 along with the report of the Committee was able to be served in the same address. After the receipt of this notice, the petitioner was given an opportunity to give his reply. This procedure adopted sufficiently satisfies all the requirements of the Master Circular.

11.The Review Committee has considered all the materials along with the order of the Committee of executives and the stand taken by the petitioner. The Review Committee apart from placing reliance upon the forensic audit report has also taken note of the fact that the petitioner was incharge of the affairs of the defaulting Company during the relevant point of time and the first fraudulent transaction occurred on 08.01.2013 much before the retirement of the petitioner. The Review Committee also took into consideration the fact that apart from diversion of funds, the lenders were removing the assets and selling the inventory and there were serious irregularities, misdeeds and omissions even prior to declaring the account of the Company as NPA. In fact, the account of the Company slipped to NPA within four months after the petitioner resigned.

12.The Review Committee has placed heavy reliance on the forensic audit report and has also applied its mind and the defense taken by the petitioner and has passed the orders.

13.The petitioner has been given sufficient opportunity and the Review Committee has taken into consideration the stand taken by the petitioner and also considered all the materials including forensic audit report and came to a conclusion. Hence, this Court does not find any error of law on the face of the order of the Review Committee warranting the interference of this Court.

14.In a case of this nature, the Court is only expected to see whether sufficient opportunity was given to the petitioner and all the materials were taken into consideration by the Review Committee before passing the final orders. The mandate under the Master Circular and para 24 of the Apex Court judgment, has been followed in this case. The decision making process does not suffer from any illegality. That apart, it is also seen that the liquidator has initiated proceedings for recovery of money from the petitioner and others by filing appropriate application before the NCLT, New Delhi on the ground that all of them have diverted the funds and misappropriated the funds.

15.In the light of the above discussion, this Court does not find any merits in this case and accordingly, the present writ petition stands dismissed. No costs. Consequently, connected WMPs are closed.

14.08.2025

Index : Yes/No
Neutral Citation : Yes/No
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To

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Chennai 600 001.

N.ANAND VENKATESH,J

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